

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-CV-11897-WGY

_____)
MASSAMONT INSURANCE)
AGENCY, INC.,)
)
Plaintiff,)
)
UTICA MUTUAL)
INSURANCE COMPANY,)
)
Defendant.)
_____)

**PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT
AND REQUEST FOR ORAL ARGUMENT PURSUANT TO LOCAL RULE 7.1(D)**

The plaintiff, Massamont Insurance Agency, Inc. (“Massamont”), hereby moves for partial summary judgment in the above-captioned matter pursuant to Rule 56 of the Federal Rules of Civil Procedure. Specifically, Massamont requests this Court to enter summary judgment in its favor and against the defendant, Utica Mutual Insurance Company (“Utica.”), on Counts I, III, IV and VI of the plaintiff’s Complaint. As grounds therefor, the plaintiff states that:

1. No material issues of fact remain in dispute with respect to Utica’s breach of its duty to defend Massamont against the third-party claim of Westchester Fire Insurance Company (“Westchester”) under the terms and provisions of Utica’s Insurance Agents and Brokers Errors and Omissions Liability Policy (the “E&O Policy”), and Massamont is entitled to relief for such breach under Count I of its Complaint as a matter of law.

2. No material issues of fact remain in dispute with respect to Utica’s breach of its duty to indemnify Massamont for the full amount of the Westchester arbitration award under the terms and provisions of Utica’s E&O Policy, and Massamont is entitled to relief for such breach under Count

IV of its Complaint as a matter of law.

3. Massamont is also entitled to declaratory relief regarding Utica's duty to defend Massamont against Westchester's third-party claim and subsequent Petition to Confirm the arbitration award, and regarding Utica's duty to indemnify Massamont for the full amount of the arbitration award as confirmed by the subsequent Petition to Confirm under Counts III and VI of its Complaint, respectively, as a matter of law.

In support of this Motion, the plaintiff submits the following materials enclosed herewith:

- Affidavit of Hilbert Schenck II, and Exhibits thereto;
- Plaintiff's Concise Statement of Material Facts in Support of its Motion for Partial Summary Judgment; and
- Memorandum of Law in Support of Plaintiff's Motion for Partial Summary Judgment.

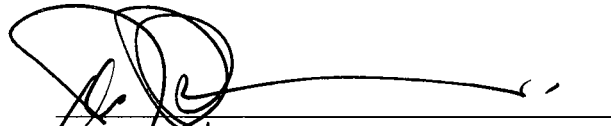
WHEREFORE, the plaintiff, Massamont Insurance Agency, Inc., requests this Court to enter summary judgment in its favor and against the defendant, Utica Mutual Insurance Company, on Counts I, III, IV and VI of the plaintiff's Complaint.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), the plaintiff, Massamont Insurance Agency, Inc., hereby requests oral argument on its Motion for Partial Summary Judgment based on plaintiff's belief that oral argument may assist this Court in deciding the issues contained herein.

Respectfully submitted,
The Plaintiff,
MASSAMONT INSURANCE AGENCY, INC.,

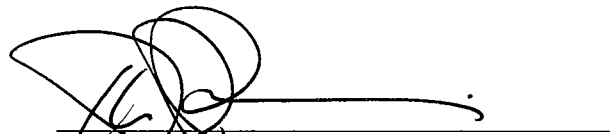
By its attorneys,
PIERCE, DAVIS & PERRITANO, LLP



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Certificate of Compliance

Counsel for the plaintiff, Massamont Insurance Agency, Inc., hereby certifies that he conferred with defendant's counsel and attempted in good faith to resolve or narrow the issue in compliance with Local Rule 7.1(A)(2).



John J. Davis, Esq.

Dated: May 5, 2006